



MEMBERS

Riley Davis, Jr.
Chairperson

Rev. James Phillips, Jr.
1st Vice Chairperson

Jorge E. Reynardus, Esq.
2nd Vice Chairperson

Heddy Peña

Dorothy J. Rollins

Chief John S. Ross

John W. Thornton, Esq.

Min. Dr. Freeman Wyche, Sr.

David B. Rothman, Esq.
Chairperson Emeritus

Eduardo I. Diaz, Ph.D.
Executive Director

Wesley A.C. Pomeroy
*Executive Director
Emeritus (Deceased)*

Ronald J. Bernstein
Assistant County Attorney

Kenneth B. Drucker
Assistant County Attorney

140 WEST FLAGLER STREET
SUITE 1101 MIAMI, FL
33130-1561
(305) 375-4880
FAX (305) 375-4879
email:
irp@co.miami-dade.fl.us



October 27, 2003

Hon. Barbara Carey-Shuler, Ed.D.

Chairperson

Miami-Dade Board of County Commissioners

111 NW 1st St. Suite 220

Miami, FL 33130

RE: Independent Review Panel Complaint A2003.151 – Anonymous (IA 2001-0064 - Simonton)

Dear Dr. Carey-Shuler:

Enclosed is the final report of the Independent Review Panel (IRP) regarding the MDPD investigation and findings concerning alleged misconduct by Officer Dak Simonton. This case is an example of one in which IRP subpoena power or alternative method of compelling testimony would have been very useful.

This officer was not held accountable for his behavioral impropriety or dishonesty. The lack of authority to compel testimony prevented the Panel from direct questioning of the pertinent parties, who were invited to participate but did not choose to attend the IRP Committee or Panel meeting.

The Independent Review Panel found the officer was dishonest in statements he gave to MDPD officials. He first denied the allegations made by the little girl and later admitted he did touch her. The IRP believes this officer should not be exempt from some form of formal discipline.

The “swept under the rug” allegation was “not sustained,” meaning the evidence available for review was insufficient to support or refute the allegation. Doubts linger but it is hoped that those who do have the power to compel testimony will read the details documented in this report and take appropriate action.

Sincerely,

Riley Davis,
Chairperson

RD:cb

Enclosure

c: George Burgess, County Manager

Disposition of the Independent Review Panel

Complainant: Anonymous

Date: September 2, 2003

IRP Case: A 2003.151

MDPD Case: IA 2001-0064



The Independent Review Panel met on August 28, 2003 for the purpose of publicly reviewing an allegation made in an anonymous letter against the Miami-Dade Police Department, and the Professional Compliance Bureau investigation relating to the allegation. The following represents the findings of the Panel:

A. Incident

On 2/23/01, at approximately 8 PM, off-duty Officer Dak Simonton took an 11-year-old female friend of the family to the Kendall Station for a tour. The little girl said that on the way home, the officer touched her on the thigh, held her hand, stopped the car in a wooded area and tried to kiss her.

The family became aware of the incident on 2/28/03 and on that date the officer called his supervisor to report what the little girl was saying and to advise the supervisor it didn't happen. The officer's phone call led to a Sexual Crimes Bureau investigation and an Internal Affairs investigation.

B. Allegation

Anonymous asked: "Why was the Dak Simonton case, whose mother is a federal magistrate and father is an assistant US Attorney, swept under the rug? The [MDPD] disposition panel sustained the sexual misconduct charges, then the director had attorney Tom Guilfoyle write an opinion to reverse it. Is this protocol/SOP? Wasn't it supposed to go back to the panel if he didn't agree?"

C. Disposition of the Independent Review Panel

The Panel found the allegation to be **Not Sustained**, based on the following:

1. There is no evidence made available for review that supports the conclusion that the case disposition was influenced by the subject officer's parents' employment status.
2. The case was not "swept under the rug" or hidden, given that the case file is intact and provides documentation of facts made available as a public record.

3. The MDPD disposition panel did not in fact sustain “sexual misconduct charges,” but did sustain “Conduct Unbecoming an Officer: As detailed therein.” The details included the fact that the officer “admitted to touching the complainant’s leg a ‘few times.’”
4. Police Legal Attorney Guilfoyle was asked for an opinion subsequent to a private meeting between the subject officer and Director Alvarez. However, the file does not contain the nature of the directive and the responsibility to terminate or not terminate employment is at the discretion of the Department Director.
5. According to testimony, it is not unusual, in practice, for the Department Director to reject a disposition recommendation and to arrive at a different conclusion than a Disposition Panel.
6. Chapter 15 of the MDPD Departmental Manual, Section C 7a (“Should questions arise as to the findings of the Disposition Panel, the investigative file accompanied by a memorandum of explanation may be returned to the Disposition Panel”) includes “may” language rather than “shall” or “must” and does not require the Department Director to articulate why he decided one way or another.

C. Other Findings

1. The evidence, including the officer’s own admission, substantiates the allegation that Officer Dak Simonton violated Administrative Order 2-18, “Conduct Unbecoming” when he touched the 11-year-old girl between the knee and thigh.
 - Administrative Order 2-18 states: “The conduct of a public employee, on- and off-duty, reflects on the Department. Employees must avoid conduct which might discredit themselves or the Department.”
2. Both the alleged victim and the subject officer provided testimony he touched her above the knee several times.
 - In her statement to the Sexual Crimes Bureau, the little girl stated the officer “touched my thigh.”
 - When the officer was asked in his statement if he patted the little girl on her leg, he responded: “Yes I did.” When asked how many times, he replied: “A few.”
3. Officer Simonton was untruthful in two statements:
 - In his 2/28/01 statement to his supervisor, Sergeant R. Singer, when he said the allegations of the 11-year-old girl did not happen.
 - Sgt. Singer reported to Sexual Crimes Bureau Detective Gaborik that Officer Simonton told him the little girl said he [Simonton] “pulled over on the way home from their station visit, rubbed her legs and tried to kiss her,” and “what was being said did not happen.”

- In the first part of his 3/1/01 statement to Sexual Crimes Bureau Detective Gaborik when denied touching the little girl in the vehicle. The following is quoted from Detective Gaborik's report:
 - The subject [Simonton] denied the allegations as stated by the victim.
 - He was asked if he had rubbed her leg. He denied touching her leg in the vehicle. He was asked if he tried to hug or kiss her in the vehicle. He denied that.
 - During the interview, the subject could not maintain eye contact and seemed especially nervous when asked about the activity that the victim had described.
 - I [Gaborik] told the subject he was not being truthful. He was asked to tell the truth.
 - The subject began to cry. He was not questioned for a few minutes, so he could regain his composure.
 - After he calmed down, he was asked to tell the truth.
 - He was reminded that the victim has told only one story and she is eleven. He was told that he had been given several opportunities by her family and then to [detectives] to tell the truth, but has given several different versions. He said he was now telling the truth. He agreed to provide a formal statement.

In his sworn statement to Detective Gaborik, Officer Simonton admitted that, while in his vehicle:

- He patted the little girl on the leg.
 - "I went to put my arm around her shoulders, she pulled away and I sensed that she didn't want that and I pulled away."
 - "I did grab her hand and held it in a wristlock,"
4. Officer Simonton's dishonesty was not addressed by those who arrived at a "Not Sustained" disposition.
 5. No evidence was found that MDPD took any corrective action relating to Officer Simonton's conduct.
 6. Mr. Guilfoyle disagreed with the MDPD Disposition Panel's sustained finding of "Conduct Unbecoming" in his 9/17/01 Memo to Director Alvarez, based on the following:
 - a. None of the Sexual Crimes Bureau statements indicate that a lewd or lascivious act occurred.
 - b. There were no witnesses or other evidence to corroborate the statements of the victim or the subject.
 - c. This case is ultimately a "one-on-one" situation.

7. The SOP regarding Disposition Panel findings is confusing: Chapter 15, Part 4, Section C, third paragraph states: "The disposition of IA cases will be conducted and prepared by disposition panel members only." Section D7a states: "Should questions arise as to the findings of the disposition Panel, the investigative file accompanied by a memorandum of explanation may be returned... to the Panel for clarification.
8. Chapter 15, Part 4, Sections C and D are silent on the role of the Department Director when there is disagreement with the Disposition Panel's findings.
9. MDPD Procedure does not require that the meeting with the Director and accused employee prior to dismissal action be documented in any way, nor does it require documentation of the exchange between the Director and the Legal Bureau official following the meeting.
10. The documented incident of Officer Simonton's behavior with a minor child constitutes "legal exposure" for the County should the behavior repeat itself.
11. The Sexual Crimes Bureau and Internal Affairs investigations were well conducted.
12. The Department Director has the authority to determine that no corrective action or discipline be required.

D. Recommendations

1. MDPD reduce the County's legal exposure and address documented misconduct by placing the subject officer, at a minimum, on probationary status or special management watch, pending completion of a course of specialized treatment addressing child maltreatment.
2. MDPD impose some form of discipline on the subject officer for misrepresenting the truth.
3. MDPD preserve any evidence utilized in overturning a Disposition Panel decision, regardless of who makes final determination.
4. Miami-Dade County adopt a procedure that requires all Department Directors to articulate in writing the rationale for opposing recommendations for disciplinary actions, in order to permit the residents of Miami-Dade County to evaluate the propriety for such action.



Metro-Dade Police Department

Director's Office
9105 N.W. 25th Street
Miami, Florida 33172



An Internationally
Accredited
Police Service

September 18, 2003

Eduardo I. Diaz, Ph. D.
Executive Director
Independent Review Panel
140 W. Flagler Street, Suite 1101
Miami, Florida 33130-1561

Dear Dr. Diaz:

This is in response to your letter of September 3, 2003. The letter referred to the Independent Review Panel (IRP) investigation and its finding of "Not Sustained" concerning an anonymous letter which alleged that a Miami-Dade Police Department Internal Affairs investigation was "swept under the rug."

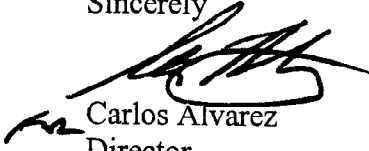
As part of its review of the allegations, the IRP also recommended that the Miami-Dade Police Department impose discipline on the involved officer and place him on probation or management watch pending a course of treatment. As you are aware, based on the legal opinion of a departmental attorney, the case had to be not sustained because there was insufficient evidence to prove or disapprove the allegation. The allegation could not be proved by a preponderance of evidence. However, I will have my staff determine whether the personnel rules and Chapter 112, Part VI, Florida Statutes, permit the actions recommended by the IRP. It should be noted that the Criminal Justice Standards and Training Commission has determined that there is no basis for any disciplinary action concerning the involved officer.

Staff will also evaluate possible methods of preserving evidence when a Disposition Panel decision is overturned, although in the case under discussion, the legal opinion was memorialized in a memorandum. The recommendation that all Department Directors articulate in writing their rationales for opposing recommended discipline would be best submitted to the Employee Relations Department and the County Attorney's Office, however, we will provide input if needed.

Eduardo I. Diaz, Ph. D.
September 18, 2003
Page 2

Thank you for providing us with the IRP recommendations. We also appreciate the fact that the IRP determined that the other libelous allegations in the anonymous letter were unworthy of consideration. We will continue to work with the IRP to improve the quality of service provided to residents of Miami-Dade County.

Sincerely



Carlos Alvarez
Director

c: George M. Burgess
County Manager

Pedro Casanova, Major
Professional Compliance Bureau

Thomas Guilfoyle, Esq.
Police Legal Bureau